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| 10/539,117 | 06/16/2005 | Ryuzo Ueno | 1691-0208PUS1 | 8980 |
| 2292 7590 06/30/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747 | | | | |
| EXAMINER CHAWLA, JYOTI | | | | |
| ART UNIT 1794 | | PAPER NUMBER | | |
| NOTIFICATION DATE 06/30/2008 | | DELIVERY MODE ELECTRONIC | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/539,117

Applicant(s)

UENO ET AL.

Examiner

JYOTI CHAWLA

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/DF)
Paper No(s)/Mail Date 6/16/05, 9/16/05, 9/14/07
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claims 1-8 are pending and examined in the application.

Claim Objections

Claims 3 and 8 are objected to for the use of "wt %", which is an abbreviation. The applicant is suggested to rephrase it to "percent by weight".

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites a phrase "Japanese sweets" in line 2 of the claim, however, it is unclear as to what sweets or foods are encompassed by the term. It is not evident from the claim, as recited whether "Japanese sweets" includes foods containing a sweetener made in Japan or sold in Japan or consumed in Japan or consumed by Japanese consumers or something else. Correction and /or clarification is required. For the purpose of examination "Japanese sweets" will be regarded as any sweet that has any relationship with Japan, including but not limited to the relations described above.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Bucke et al. (US 4587119), hereinafter Bucke.

Regarding claim 1, Bucke teaches a sweetener mixture-containing food which comprises a sweetener mixture of isomaltulose, which is a sugar alcohol and cane sugar (Abstract, Column 1, lines 11-20, Column 5, lines 5-10).

Regarding claim 2, Bucke teaches of total or partial replacement of sugar in foods (Column 5, lines 5-10). Regarding the mixing ratio of sugar alcohol and sugar, Bucke teaches of combinations of sugar and isomaltulose where the mixing ratio of sugar alcohol and sugar is 4.7: 10.9 (Column 7, Example 2) and 30:20 (Column 8, Example 3(a)) by weight, which fall in the range of the sugar alcohol to cane sugar is 5:95 to 70:30, as recited by the applicant

Regarding claims 3 and 8, Bucke teaches of foods which contain the sweetener mixture of a sugar alcohol and cane sugar in an amount of 15.6% (Column 7, Example 2) and 50% (Column 8, Example 3(a)), which fall in the recited range of 5 to 60 wt % .

Regarding claims 4 and 5, Bucke teaches of Isomaltulose (Abstract, Column 1, lines 11-20, Column 5, lines 5-10). Bucke teaches of hydrogenated isomaltulose (Column 3, lines 58-61), as instantly claimed.

Regarding claim 6, Bucke teaches of a sweetener mixture-containing food wherein the cane sugar is caster sugar, icing sugar, both are granulated sugar varieties (Column 7, Example 2 and Column 8, Example 3(a)), as instantly claimed.

Regarding claim 7, Bucke teaches that the sweetener mixture-containing foods can be fudge toffee candies or sweets, baked foods, cakes, pastries and biscuits, jams , marmalades, fruit conserves, ice-creams and frozen desserts, canned, bottled,

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steamed foods etc. (Column 4, lines 11-31, Column 2, lines 5-10 and Column 7-8) which fall in applicant's recited group of foods.

Therefore, claims 1-8 are anticipated by Bucke.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTI CHAWLA whose telephone number is (571)272-8212. The examiner can normally be reached on 9:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794

Jyoti Chawla
Examiner
Art Unit 1794